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Filing date: **04/17/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91213763
Party	Plaintiff Inhale, Inc.
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Date	04/17/2014
Attachments	Motion to Accept Late Filed Answer to Counterclaim.pdf(28514 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 85/929,488

Mark: NEVER XHALE

Filed: May 12, 2013

Published: October 29, 2013

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)	
INHALE, INC.,)	
)	
Opposer,)	
)	OPPOSITION NO: <u>91213763</u>
v.)	
)	
)	
KSX ENTERPRISE, INC.,)	
)	
Applicant.)	
)	
)	

MOTION FOR OPPOSER’S LATE FILED

ANSWER TO COUNTERCLAIM TO BE ACCEPTED

Opposer is the owner of U.S. Trademark Registration No. 4,063,774 (“Opposer’s Registration”) for the mark “EXHALE” (“Opposer’s Mark”) for “Hookah, hookah pipes, hookah bases, hookah tobacco, vaporizer, and water pipes,” in International Class 034 (“Opposer’s Goods”).

On May 12, 2013, Applicant filed U.S. Application Serial No. 85/929,488 for the mark “NEVER XHALE” (“Applicant’s Mark”) for “Cigarette cases not of precious metal; Cigarette lighters nor of precious metal; Electric cigarettes; Hookahs” in International Class 034 (“Applicant’s Goods”).

On November 29, 2013, Opposer filed a Notice of Opposition. On January 2, 2014, Applicant filed an Answer to the opposition. In the Answer, Applicant included a counterclaim to cancel Opposer’s Registration. Opposer received a copy of Applicant’s Answer on or around January 7, 2014. See *Teran Decl.*, ¶4.

On April 8, 2014, Applicant filed a Motion for Default Judgment for Failure to Answer based on Opposer’s failure to file an answer to Applicant’s Counterclaim.

On April 17, 2014, Opposer filed an Opposition to Applicant’s Motion for Default Judgment. In addition, on April 17, 2014, Opposer filed a late Answer to Counterclaim.

For the reasons discussed in detail in the Opposition to Applicant’s Motion for Default Judgment, Applicant hereby requests its late filed Answer to Counterclaim to be accepted.

As discussed in detail in the Opposition to Applicant’s Motion for Default Judgment, Applicant received an incomplete copy of its Answer to Opposition. Applicant’s Answer was missing page no. 4 which includes the Counterclaim. In addition, the title of Applicant’s document simply states “Answer to Notice of Opposition” without any indication that said document includes a counterclaim. Furthermore, the pages in Applicant’s Answer are not numbered so Opposer could not reasonably know that the copy it had received was missing a page.

Even further, Applicant never inquired or requested a meet and confer on Opposer’s failure to file an Answer to Counterclaim prior to filing its Motion for Default Judgment. In fact, Applicant failed to respond to at least two letters sent by Opposer regarding the requisite Discovery Conference. The details to these matters are discussed in detail in the Opposition to Applicant’s Motion for Default Judgment.

Based on the foregoing and the facts outlined in the Opposition to Applicant's Motion for Default Judgment, Opposer respectfully requests that the Board accept late filed Answer to Counterclaim filed concurrently with this Motion.

Dated: April 17, 2014

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'L. Teran', with a horizontal line extending to the right.

Louis F. Teran
Attorney for Opposer
Inhale, Inc.

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CERTIFICATION OF SERVICE

I certify that a copy of this MOTION FOR OPPOSER'S LATE FILED ANSWER TO COUNTERCLAIM TO BE ACCEPTED is being served via USPS on this the 17th day of April, 2014, to the following:

Applicant's Attorney/Representative:

Fei Pang
LAW OFFICES OF FEI PANG
630 w. Duarte Rd. Suite #302
Arcadia, CA 91007

The above document is also being emailed to fp@panglawyer.com on the same day.

A handwritten signature in black ink, appearing to read 'L. Teran', is written over a horizontal line.

Louis F. Teran